IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1089 OF 2005
WITH
CIVIL APPLICATION NO.2631 OF 2005

M/s.Precision Rubber Industries P.Ltd. ..Appellant.

V/s.

Maharashtra State Electricity Board. ..Respondent.

Mr.Haresh Jagtiani, Sr.advocate with Amit J.Jaisinghani i/b Haresh Jagtiani & Asso. for appellant.

Ms.A.R.S.Baxi for Respondent.

CORAM: A.M.KHANWILKAR,J
DATE : JANUARY 25, 2006.

P.C. :

1. Heard counsel for the parties.

2. Appeal is admitted.

3. In so far as interim relief is concerned, the same will have to be rejected for the simple reason that no substantive relief consistent with the interim relief prayed, has been claimed by the Appellant/plaintiff. As the suit is only for declaration that the demand made by the respondent under bill dated 22nd October, 1991 is illegal.

4. To get over this position, learned counsel

for the appellants would contend that the appellants have claimed relief in the suit for decree against the defendants to pay plaintiffs sum of Rs.8,00,000/- with the interest at the rate of 18% per annum from the date of filing of the suit on the assumption that the payment of Rs.9,35,735.83 under supplementary bill issued alongwith the letter dated 20th February, 1992 pertaining to period June, 1984 to September 1991 is illegal. It is not possible to accept this submission. In any case, the appellants will have to first succeed in establishing that the said demand made by the respondent was illegal or at best excessive so as to entitle for a decree of refund of the deposit. The trial court has already non-suited the appellants for the reasons recorded in the impugned judgment.

5. Till the appellants succeed in establishing that the demand made by the respondent is excessive, it is not possible to grant interim relief as prayed unless the appellants to settle outstanding claim amount of the respondent which is the subject matter of the suit. In other words, it is not possible to accede to prayer clause (a) and (b). For the aforesaid reasons the question of issuing mandatory directions in terms of prayer clause(c) of the said

application also does not arise. Hence, civil application is rejected with the above observations.